



## **MINUTES**

**CITY OF SCOTTSDALE POLICE LOCAL BOARD OF THE  
PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM (PSPRS)  
REGULAR MEETING  
11:00 a.m., Thursday, June 21, 2012  
HR Pinnacle Conference Room  
7575 E. Main Street  
Scottsdale, Arizona 85251**

**PRESENT:** Jack Cross, Chairman/Mayoral Designee  
Jeffrey Burg, Citizen Member  
James Butera, Elected Member  
Velicia McMillan, Citizen Member/Merit Head  
Jeffrey Walther, Elected Member

**STAFF:** Colleen Barraza  
Ken Nemec  
Chanda Washington

**OTHERS:** Mike Anthony, Esq.  
Hannah Auckland, Esq.  
Police Officer Edward Haines, Jr. (via telephone)  
Police Officer John Herrick

### **Call to order**

Chairman Cross called the meeting to order at 11:08 a.m. He stated that the first order of business was the acknowledgement that all Board members were present.

### **Roll call**

A formal roll call confirmed the members present as stated above.

### **Possible Executive Session**

Executive Session may occur at any time during this meeting.

**1. Review and approval of meeting minutes—May 10, 2012**

**BOARD MEMBER WALTHER MOVED TO APPROVE THE REGULAR MEETING MINUTES OF THE MAY 10, 2012 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF FIVE (5) TO ZERO (0).**

**2. Review and approval of executive session meeting minutes—May 10, 2012**

**BOARD MEMBER BUTERA MOVED TO APPROVE THE EXECUTIVE SESSION MEETING MINUTES OF THE MAY 10, 2012 PSPRS POLICE LOCAL BOARD MEETING AS PRESENTED. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF FIVE (5) TO ZERO (0).**

**3. Induction of new Scottsdale police officers into PSPRS**

Mr. Nemec announced that there were no new Scottsdale police officers to induct into the PSPRS at this time. Staff has been advised that there would be several to induct during the July 2012 meeting.

**4. Discussion and vote on the Survivor Benefits application of Mrs. Katherine Cwengros, widow of deceased retired Police Officer Michael Robert Cwengros**

Ms. Washington reported that Ms. Cwengros' husband passed away in May of 2012 and she has applied for the surviving spouse benefit. She confirmed that all of the paperwork was in order and \$3,881.40 was to be paid to Ms. Cwengros on a monthly basis.

Chairman Cross expressed the Board's appreciation of retired Police Officer Cwengros' 30 years of service to the City of Scottsdale.

**BOARD MEMBER BUTERA MOVED TO APPROVE THE SURVIVOR BENEFIT APPLICATION COMPLETED BY MRS. KATHERINE CWENGROS WIDOW OF DECEASED EMPLOYEE AND PSPRS MEMBER MICHAEL ROBERT CWENGROS. BOARD MEMBER MCMILLAN SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF FIVE (5) TO ZERO (0).**

**5. Discussion and vote on the Accidental Disability Retirement application of Police Officer James R. Peters**

Chairman Cross recommended that the Board recess into executive session in order to discuss a couple of the agenda items before proceeding any further.

**CLOSED PUBLIC HEARING**

**Motion to recess into executive session for discussion of Accidental Disability Retirement applications of Police Officer James R. Peters, II, Police Officer Edward J. Haines, Jr., and Police Officer John Herrick**

**BOARD MEMBER BUTERA MOVED TO RECESS INTO EXECUTIVE SESSION FOR DISCUSSION OF POLICE OFFICER JAMES R. PETERS' ACCIDENTAL DISABILITY RETIREMENT APPLICATION. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF FIVE (5) TO ZERO (0).**

**RECONVENE PUBLIC SAFETY PERSONNEL RETIREMENT SYSTEM MEETING FOLLOWING EXECUTIVE SESSION**

Chairman Cross inquired whether the Board needed additional time to discuss Police Officer James R. Peters' accidental disability retirement application. The Board concurred that they were ready to move forward on his application at this time.

**BOARD MEMBER WALTHER MOVED TO APPROVE THE ACCIDENTAL DISABILITY RETIREMENT PENSION OF JAMES R. PETERS, II SINCE HE DOES SATISFY THE STATUTORY REQUIREMENTS, SUBJECT TO FINAL PAYROLL CALCULATIONS AND QUALIFIED DOMESTIC RELATIONS ORDERS. BOARD MEMBER BUTERA SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF FIVE (5) TO ZERO (0).**

**6. Discussion and vote on the Accidental Disability Retirement application of Police Officer John Herrick**

Chairman Cross reported that there was additional medical documentation presented on the Applicant's behalf during executive session which has been reviewed by all the Board members.

In response to Chairman Cross' invitation to the Board to discuss whether they would like to send Police Officer John Herrick for an independent medical examination, the Board directed staff to initiate the IME process.

**BOARD MEMBER BUTERA MOVED TO APPROVE THE ISSUANCE OF AN INDEPENDENT MEDICAL EXAMINATION THROUGH ONE OF THE BOARD'S CONTRACTED MEDICAL PROVIDERS FOR THE APPOINTMENT OF A MEDICAL SPECIALIST TO SERVE AS THE MEDICAL BOARD FOR THE APPLICATION OF POLICE OFFICER JOHN HERRICK. BOARD MEMBER BURG SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF FIVE (5) TO ZERO (0).**

**7. Discussion and vote on the Accidental Disability Retirement application of Police Officer Edward Haines, Jr.**

Chairman Cross requested that legal counsel address the timing issues related to the accidental disability retirement application of Police Officer Edward Haines, Jr..

In response to Mr. Anthony's inquiry regarding whether the Applicant consents to discussing his medical records in open session, Police Officer Haines responded yes.

Mr. Anthony explained that applications for any type of disability pension under the Public Safety Personnel Retirement System must be filed within one year of the date of termination of employment, pointing out that his application appears to have been filed beyond that deadline.

Police Officer Haines recalled that once his accidental disability retirement application was denied by the Board, he was awarded an Ordinary Disability Retirement. At that time he had also filed a worker's comp claim with the Industrial Commission of Arizona and did not receive an award from the Commission until October 7, 2011.

Police Officer Haines summarized that once he received the award letter determining that his injuries were work related he directed his attorney to get back to the Board to inquire whether he could reapply for the accidental disability retirement.

Chairman Cross invited legal counsel to discuss the time frame an applicant has to appeal the Board's decision .

Mr. Anthony explained that an applicant has 30 days from the date it was notified of the Board's denial of their application, either by being present at the meeting or by receiving the Board's decision by mail, in order to request a rehearing.

He stated that staff has no record of Police Officer Haines ever requesting a rehearing of his Accidental Disability Retirement application.

Police Officer Haines summarized that during that time frame he was still working with his attorney on his worker's comp claim and once he received affirmation from the Industrial Commission of Arizona that his injuries were job related he reapplied for the accidental disability retirement.

Mr. Anthony explained that the Police Local Board was required by statute to base its decisions on the medical information supplied by its appointed IME physician, which it did when it denied Police Officer Haines' initial accidental disability application.

Police Officer Haines opined that since the Industrial Commission of Arizona determined that his injuries were work related and awarded his compensation claim on October 3, 2011 the time limits should not keep him from receiving his accidental disability retirement benefits.

Chairman Cross pointed out that it could go either way and the Industrial Commission of Arizona could have determined that the Applicant was not eligible and the Board could have determined that he was. He noted that Police Officer Haines did sign the ordinary disability application stating that he accepted that benefit.

Board Member Walther confirmed that the Industrial Commission based their decision on the fact that the Applicant was a police officer and it was the department's expectation that he maintain a certain level of fitness.

He pointed out that although the Scottsdale Police Department encourages its officers to be fit, they do not have a fitness requirement or policy mandate to work, although other agencies within the state do.

Board Member Walther recalled that Police Officer Haines' documentation reflected that he lifted 71 million pounds of weight during a 15-year power lifting career.

Police Officer Haines explained that he was paid for working out in order to compete in the games against police officers from other countries and states. He stated that although the Department did not request that he work out as hard as he did, he did it for himself and the City of Scottsdale and his body was injured in the process.

**BOARD MEMBER BURG MOVED TO DISAPPROVE THE ISSUANCE OF AN INDEPENDENT MEDICAL EXAMINATION THROUGH ONE OF THE BOARD'S CONTRACTED MEDICAL PROVIDERS FOR THE APPOINTMENT OF A MEDICAL SPECIALIST TO SERVE AS THE MEDICAL BOARD FOR THE APPLICATION OF POLICE OFFICER EDWARD HAINES, JR. BOARD MEMBER WALTHER SECONDED THE MOTION, WHICH CARRIED BY A UNANIMOUS VOTE OF FIVE (5) TO ZERO (0).**

Chairman Cross explained that the reasons for the denial of the issuance of an IME were due to the missed 30 day time limit to appeal the Board's initial denial, the missed one year time limit to apply for the accidental disability retirement, and the fact that the first application had already been denied by the Board.

**8. Report to the Board on recently completed transfers of prior service credits**

Ms. Washington reported that Michael Tang transferred 1.88 years of service from Public Safety over to Arizona State Retirement System in the amount of \$7,179.00.

**9. Board suggestions for upcoming agenda items**

Chairman Cross confirmed that there were no Board suggestions for upcoming agenda items at this time.

**ADJOURNMENT**

With no further business to discuss, being duly moved and seconded, the meeting adjourned at 11:43 a.m.

Respectfully Submitted by:

REVIEWED BY:

Ken Nemec  
PSPRS Police Local Board Secretary

Jack Cross  
PSPRS Chairman/Mayoral Designee